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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,519	04/12/2001	Harry C. Merritt		2520

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11/05/2002

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EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER


3643

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

# Office Action Summary

Application No. <b>09/833,519</b>	Applicant(s) <b>MERRITT</b>	
Examiner <b>KURT ROWAN</b>	Art Unit <b>3643</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 12, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other:  |

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## DETAILED ACTION

### *Claim Rejections - 35 U.S.C. § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 12, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Haber.

The patent to Haber shows a fishing rod having a throwing projectile 36 with a bore 44, 45 therethrough as shown in Figs. 1-5. Haber shows an elongated piece 17 having a first mounting section 27 for mounting the elongated piece on the terminal end of a fishing rod 15. Haber shows a second throwing projectile section 28 whereby the throwing projectile slides onto the throwing projectile section by the throwing projectile bore. Haber shows means for mounting the elongated piece using the first mounting section to the terminal end of a fishing rod. The rod of Haber can be considered as a fly rod since no structure is recited to differentiate a fly rod from a spinning rod and the rod of Haber will function as a fly rod with equipped with a fly reel and line. Haber shows mounting the elongate piece on the terminal end of the rod without removing or modifying any hardware on the rod. Applicant has not stated what this hardware is. Further, the rod of Haber can be used as a device to teach casting a fly line without actual use of a fly line since Haber shows all of the structural elements recited.

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***Claim Rejections - 35 U.S.C. § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-11, 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haber.

The patent to Haber shows a fishing rod and rig as discussed above. Haber does not show a method for teaching the proper motion for casting a fly line. However, Haber makes a casting motion and throws the projectile 36 from the throwing projectile section. In reference to claims 4, 19, Haber shows an angle of 90 degrees, but it would have been obvious to employ other angles since the function is the same. In reference to claim 5, inherently the throwing projectile of Haber most closely approximates a particular type of line. In reference to claims 6, 10, Haber shows means for stopping 29. In reference to claims 7, 14, Haber does not show a spherical throwing projectile, but it would have been obvious to employ a spherical throwing projectile since the function is the same and no stated problem is solved by the shape of the throwing projectile. In reference to claims 8, 9, 15 and 16, 20 the size would be determined through routine experimentation since no showing of unexpected results was made. Hence, it would have been obvious to employ a spherical throwing projectile of a diameter of between 1 and 3 inches which approximates 30 feet of fly line. In reference to claim 11, Haber shows

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means 37 for holding the projectile in place against the means for stopping 29. In reference to claim 17, it would have been obvious to observe the results of the cast by Haber and if the cast did not end up in the right place to repeat the cast to obtain a proper trajectory to land the bait in the desired location for the purpose of catching fish. Also, see the rejection of claims 1 and 12, above. In reference to claim 18, see the rejection of claim 3, above.

Claim 17 should be amended to include that the elongated piece is mounted in the tip eyelet as shown in Fig. 2 and a whereby clause should state that no fishing line is used when the practice casting is being done or that the eyelets are free of fly line in equivalent language.

### ***Response to Arguments***

5. Applicant's arguments filed August 12, 2002 have been fully considered but they are not persuasive. The apertured magnet tip member 17 of Haber is an elongated piece since it has a length. Haber shows a terminal eyelet and it does not appear that the rod of Haber has been modified. Whether or not the rod is for training purposes only is not material to determine patentability. As stated above, Haber shows structure to perform the intended use. In response to applicant's argument that the fishing rod is to be used without fly line, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative

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difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the elongate tube is bent at a predetermined angle of 90 degrees) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As to the statement that the disk 36 of Haber not slide into the magnetized portion by means of a bore, see Fig. 3 of Haber which shows the disk 36 inside the magnetized piece 28 by way of aperture 23a and the element 44 also slides into aperture 23a. The claims do not require that bore is the only way the throwing projectile the throwing projectile is mounted on the fishing rod. Clearly the disk of Haber is thrown is it travels with the fishing line. The claims do not require that the disk is thrown by itself. Haber shows an elongate tube, a bore for mounting a throwing projectile on the elongate tube and requires no modification of the rod.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KURT ROWAN whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive style with a long, sweeping underline.

KURT ROWAN

PRIMARY EXAMINER

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November 4, 2002